

REPUBLIC OF VANUATU

THE CRIMINAL PROCEDURE CODE (AMENDMENT) ACT No. 13 OF 1984

Arrangement of Sections

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REPUBLIC OF VANUATU

THE CRIMINAL PROCEDURE CODE (AMENDMENT) ACT No. 13 OF 1984

An Act to make provision for the prevention of offences and for miscellaneous modifications of the Criminal Procedure Code Act.

BE IT ENACTED by the President and Parliament as follows :

**INTERPRETATION**

1. In this Act "the principal Act" means the Criminal Procedure Code Act No. 21 of 1981.

**PREVENTION OF OFFENCES**

2. The principal Act is amended by the insertion after section 23 of a new Part numbered 2B containing sections 23A to 23Q inclusive, set out in the First Schedule to this Act.

**MISCELLANEOUS AMENDMENTS**

3. The sections of the principal Act referred to in the first column of the Second Schedule to this Act are repealed or amended, as the case may be, to the extent specified in the second column of that Schedule.

**APPLICATION AND SAVING**

4. The provisions of this Act shall apply to all proceedings in criminal matters commenced on or after the date of commencement of this Act and shall also apply to all such proceedings pending on or after that date;

Provided that nothing in this Act shall affect the validity, or otherwise, of any thing done in pursuance of the provisions of the principal Act before the date of commencement of this Act.

**REPEAL OF JOINT REGULATION**

5. The Joint (Courts) Regulation No. 31 of 1964 is hereby repealed.

**COMMENCEMENT**

6. This Act shall come into force on such day as the Minister responsible for Justice shall declare by Order published in the Gazette.

The First Schedule

Section 2

PART 2B -- PREVENTION OF OFFENCES

**SECURITY FOR KEEPING THE PEACE**

- 23A. (1) Whenever a magistrate is informed on oath that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, the magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognizance, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.
- (2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such magistrate's jurisdiction.

**ORDER TO BE MADE**

- 23B. When a magistrate acting under section 23A deems it necessary to require any person to show cause thereunder, he shall make an order in writing setting forth -
- (a) the substance of the information received;
  - (b) the amount of the recognizance;
  - (c) the term for which it is to be in force; and
  - (d) the number, character and class of sureties, if any, required.

**PROCEDURE IN RESPECT OF PERSON PRESENT IN COURT**

- 23C. If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

**SUMMONS OR WARRANT IN CASE OF PERSON NOT SO PRESENT**

- 23D. If such person is not present in court, the magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

Provided that whenever it appears to such magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the magistrate may at any time issue a warrant for his arrest.

**COPY OF ORDER UNDER SECTION 23B TO ACCOMPANY SUMMONS OR WARRANT**

23E. Every summons or warrant issued under section 23D shall be accompanied by a copy of the order made under section 23B and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

**POWER TO DISPENSE WITH PERSONAL ATTENDANCE**

23F. The magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to enter into a recognizance for keeping the peace, and permit him to appear by an advocate.

**INQUIRY AS TO TRUTH OF INFORMATION**

23G. (1) When an order under section 23B has been read or explained to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before magistrates' courts.

(3) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the magistrate thinks just.

**ORDER TO GIVE SECURITY**

23H. (1) If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, with or without sureties, the magistrate shall make an order accordingly:

Provided that -

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 23B;

(b) the amount of every recognizance shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the recognizance shall be entered into only by his sureties.

(2) Any person ordered to give security for good behaviour under this section may appeal to the Supreme Court, and the provisions of Part 11 (relating to appeals) shall apply to every such appeal.

#### DISCHARGE OF PERSON INFORMED AGAINST

23I. If on an inquiry under section 23G it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

#### COMMENCEMENT OF PERIOD FOR WHICH SECURITY IS REQUIRED

23J. (1) If any person in respect of whom an order requiring security is made under section 23B or 23H is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the magistrate, for sufficient reason, fixes a later date.

#### CONTENTS OF RECOGNIZANCE

23K. The recognizance to be entered into by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the recognizance.

#### POWER TO REJECT SURETIES

23L. A magistrate may refuse to accept any surety offered under any of the preceding sections on the ground that, for reasons to be recorded by the magistrate, such surety is an unfit person.

#### PROCEDURE ON FAILURE OF PERSON TO GIVE SECURITY

23M. (1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in subsection (2), be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it.

(2) When such person has been ordered by a magistrate to give security for a period exceeding one year, such magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Supreme Court, and the proceedings shall be laid as soon as conveniently may be before such court.

(3) The Supreme Court, after examining such proceedings and requiring from the magistrate any further information or evidence which it thinks necessary, may make such order in the case as it thinks fit.

- (4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed two years.
- (5) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to the court or magistrate who made the order and shall await the orders of such court or magistrate.

**POWER TO RELEASE PERSONS IMPRISONED FOR FAILURE TO GIVE SECURITY**

23N. Whenever a magistrate is of opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate shall make an immediate report of the case for the orders of the Supreme Court, and such court may, if it thinks fit, order such person to be discharged.

**POWER OF SUPREME COURT TO CANCEL RECOGNIZANCE**

23P. The Supreme Court may at any time, for sufficient reasons to be recorded in writing, cancel any recognizance for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

**DISCHARGE OF SURETIES**

- 23Q. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate to cancel any recognizance entered into under any of the preceding sections.
- (2) On such application being made the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.
  - (3) When such person appears or is brought before the magistrate, such magistrate shall cancel the recognizance and shall order such person to give, for the unexpired portion of the term of such recognizance, fresh security of the same description as the original security. Every such order shall for the purposes of sections 23K to 23N inclusive be deemed to be an order made under section 23H.

The Second Schedule

Section 3

REPEALS AND AMENDMENTS

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Section of the principal Act	Extent of repeal or amendments
1	<p>Insert in the appropriate alphabetical order the following definitions -</p> <p>' "complainant" means a person who makes a formal complaint to a prosecutor or a police officer alleging that some other person has committed an offence; '</p> <p>' "medical practitioner" means a person duly authorized to practice medicine in Vanuatu; '</p> <p>' "private prosecutor" means a person (other than a prosecutor or police officer acting in the course of his duty as such) who having formally complained to a prosecutor or a police officer that some other person has committed an offence makes a formal complaint to a judicial officer to the same effect; '</p>
18	<p>In subsection (1) for "Republic" substitute "State".</p>
26	<p>In subsection (2) for "Republic" substitute "State".</p>
34	<p>For "charge" substitute "complaint or a preferment of a charge".</p>
35	<p>1. In subsection (1) for "prosecutor" substitute "judicial officer".</p> <p>2. Repeal subsections (2) and (3) and substitute the following subsections -</p> <p>"(2) A complaint shall be made under oath and may be made orally or in writing but if made orally it shall be reduced to writing by the judicial officer, and, in either case, shall be signed by the private prosecutor and the judicial officer;</p> <p>Provided that where proceedings are instituted by a prosecutor or by a public officer authorised under section 33, a formal charge duly signed by any such person may be presented to a judicial officer and shall be deemed to be a complaint for the purposes of this Code.</p>

35(cont'd)

(3) Subject to subsection (4) the judicial officer upon receiving any such complaint shall, unless such complaint has been made in the form of a formal charge under subsection (2) draw up or cause to be drawn up and shall sign a formal charge.

(4) Where the judicial officer is of opinion that a complaint or formal charge made or presented under this section does not disclose any offence, he shall make an order refusing to admit such complaint or formal charge and shall record his reasons for making such order."

36 In subsection (1) for "and a" substitute "or".

48 In subsection (1) for "Republic" substitute "State".

76 Add the following subsection (the present section thereby becoming subsection (1)) -

"(2) Any person who, having been duly served with a witness summons, without due cause fails to appear in answer thereto, or having appeared refuses to give evidence or produce what is required shall be guilty of an offence and be liable to a fine not exceeding 10,000 Vatu;

Provided that no witness shall be compelled to disclose anything or produce any document or writing in circumstances in which he might plead privilege from so doing."

80 In subsection (2) omit "shall" where it appears for the first time (after "prison").

85 In subsection (1) for "each" (after "commit") substitute "such".

86 1. Repeal subsections (1) and (2) and substitute the following subsections -

"(1) Any document purporting to be a plan made by a surveyor or a report under the hand of any analyst or geologist in the employment of Government or of a medical practitioner upon any person, matter or thing submitted to him for examination or analysis may be used as evidence of the facts stated therein in any trial or other proceeding under this Code.

(2) The court may presume that the signature to such document is genuine and that the person signing it held the qualification or office which he professed to hold at the time when he signed it.



86(cont'd)

(3) When any document is so used the court may, if it thinks fit, summon the surveyor, analyst, geologist or medical practitioner, as the case may be, and examine him as to the subject-matter thereof, or may cause written interrogatories to be submitted to him for reply, and such interrogatories and any reply thereto, purporting to be a reply from such person, may also be used as evidence in such trial or other proceeding."

2. Re-number subsection (3) as (4).

3. Repeal subsection (4).

89

1. In subsection (2)(c) for "except upon the application of the person so charged" substitute -

"without the consent of such person unless -

(i) the wife or husband of a person charged may, under any law in force for the time being, be called as a witness without the consent of such person; or

(ii) such person is charged with an offence against morality under sections 90 to 101 of the Penal Code Act; or

(iii) such person is charged in respect of any act or omission affecting the person or property of the wife or husband of such person or the children of both or either of them."

2. In subsection (2)(f) for the full stop at the end of the subsection substitute a comma and add -

"unless -

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(ii) he has personally or by his advocate asked questions of a witness for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence."

- 98 1. In subsection (1) omit "subject to subsection (2),".
2. Repeal subsection (2) and substitute the following subsection -
- "(2) The costs awarded under subsection (1) by a Magistrate shall not exceed 25,000 Vatu."
- 101 In subsections (1) and (2) for "the Republic" (twice) substitute "State".
- 103 For "complainant" substitute "private prosecutor".
- 107 In subsection (1) after "No." insert "17".
- 113 Repeal the whole section.
- 121 In subsection (2) omit "as the case may be".
- 124 1. In subsection (2)(e) for "the responsible authority may by order in the Gazette direct to" substitute "in pursuance of any enactment may".
2. In subsection (2)(f) before "aiding" insert "attempting,"
- 128 For "45" substitute "44".
- 129 1. For "complainant" substitute "prosecutor".
2. For "his complaint" substitute "the charge".
3. In side note for "complaint" substitute "charge".
- 139 1. Repeal subsection (1) and substitute the following subsection -
- "Where it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case;
- Provided that
- (a) where a charge is altered as aforesaid, the court shall thereupon call upon the accused person to plead to the altered charge;

139(cont'd)

(b) where a charge is so altered the accused person may demand that the witnesses or any of them be recalled and be further cross-examined by the accused person or his advocate and, in such last-mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination."

2. At the end of the section add the following subsections -

"(3) Variance between the charge and the evidence adduced in support of it with respect to the day upon which the alleged offence was committed is not material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof.

(4) Where an alteration of a charge is made under subsection (1) or there is a variance between the charge and the evidence as described in subsection (3), the court shall, if it is of the opinion that the accused person has been thereby misled, adjourn the trial for such period as may be reasonably necessary."

140 Repeal subsection (4).

149 For "give" substitute "stating".

150 In subsection (2) for "which" substitute "as".

152 For "many" substitute "may".

153 Omit "a Magistrate's Court or".

156 1. In subsection (1) -

(a) omit "and a Magistrate in each district of the Court",

(b) for "their opinion" substitute "his opinion" and

(c) omit "every Magistrate's Court and".

2. In subsection (3) omit "a copy shall be sent to every Magistrate's Court in the district, a copy" and substitute "and a copy thereof shall be".

- 157 1. Repeal subsection (2).
2. Re-number subsection (3) as (2).
- 162 In subsection (8) for "counsel" substitute "advocates".
- 165 For "counsel" substitute "advocate".
- 178 Repeal the section and substitute the following section -
- "178. (1) When, in a case tried with assessors, the case on both sides is closed, the Judge may in his discretion sum up the evidence for the prosecution and the defence, and shall require each of the assessors to state his opinion orally on all matters on which such opinion is asked, and shall record such opinion.
- (2) The Judge shall then give judgment, but in doing so he shall not be bound to conform to the opinions of the assessors and the decision on all matters on which the opinion of the assessors has been asked shall be rested exclusively in the Judge.
- (3) If the accused person is convicted, the Judge shall pass sentence on him according to law.
- (4) Nothing in this section shall be construed as preventing the assessors, or any of them, from retiring to consider their opinions if they so wish, or, during any such retirement or at any time during the trial, from consultation with one another."
- 179 In subsection (2) -
- (a) for "things" substitute "thinks";
- (b) for "the summing up" substitute "any summing up".
- 181-186 Repeal the sections.
- 200 1. In subsection (1) omit the full stop and substitute semicolon and add the following -
- "Provided that -
- (a) where such person has pleaded guilty he may appeal only on the point of the legality of the sentence;
- (b) there shall be no appeal against a sentence of fine not exceeding 2,000 Vatu (notwithstanding a term of imprisonment in default of the payment of fine) where no substantive sentence of imprisonment has also been passed."

200(cont'd)

2. In subsection (2) omit the full stop and substitute semicolon and add the following -

"Provided that where such person has pleaded guilty there shall be no appeal except -

(a) where the sentence exceeds imprisonment for six months; or

(b) on the point of the legality of the sentence only."

3. In subsection (4) omit "or appellate".

201

At the end of the section add the following subsections -

"(7) An application for an extension of time for lodging a memorandum of appeal under subsection (3) shall be filed with the registrar of the appeal court together with a memorandum of appeal in conformity with subsection (4).

(8) An appellant may at any time after he has filed a notice or memorandum of appeal or made an application for an extension of time abandon the appeal by giving notice in writing thereof to the registrar of the appeal court and upon such notice being given, the appeal shall be deemed to have been dismissed.

(9) The appeal court or a Judge thereof may at any time assign an advocate to the appellant in any appeal in which it appears desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to be represented."

208

1. At the end of the section add the following subsections -

"(3) In an appeal to the Court of Appeal there shall ordinarily be given one judgment which may be given by the senior member of the court present at the hearing of the appeal or by such other Judge present at the hearing of the appeal as the senior member may direct;

Provided that :

(a) if any Judge dissents from the judgment of the court it shall not be obligatory on him to sign the same; and

(b) separate judgments shall be given if the court is of the opinion that it is convenient that there should be separate judgments.

(4) The judgment of the Court of Appeal or of any Judge present at the hearing of the appeal shall be delivered in open court either at the hearing of the appeal or at any subsequent time of which notice shall be given by the registrar to the parties to the appeal or their representative.

(5) The judgment of the Court of Appeal or of any Judge present at the hearing of the appeal may be read in open court by any Judge, whether present at the hearing of that appeal or not or by the registrar."

2. For the side note to the section substitute the following -

"Hanging down judgment and certification of orders."

209

In subsection (1) for "shall" where it appears for the first time (after "on bail,") substitute "may".

227

For "order an inquest to be held" substitute "require a coroner to hold an inquest".

234

Repeal the section and substitute the following section -

"234 (1) Subject to subsection (2) no fees shall be levied in the registry of any court in any criminal proceedings under this Code.

(2) Where a civil claim (other than a claim falling within the provisions of section 64 of the Employment Act No. 1 of 1983) is made in the course of criminal proceedings under Part 12 of this Code, the prescribed court fees applicable to civil matters shall be levied."